

**SEC'S DEPOSITION OF  
ALAN LEFKOF  
TAKEN ON NOVEMBER 19, 2004**



6806-1 Lefkof - Nov. 19, 2004

6806-1

SHEET 1 PAGE 1

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of: )

4 NETOPIA, INC. ) FILE NO. SF-02846-A

5

6 WITNESS: Alan Lefkof

7 PAGES: 1 through 251

8 PLACE: Securities and Exchange Commission

9 44 Montgomery Street, Suite 1100

10 San Francisco, CA

11 DATE: Friday, November 19, 2004

12

13 The above-entitled matter came on for hearing, pursuant  
14 to notice, at 9:41 a.m.

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24 Diversified Reporting Services, Inc.

25 (202) 467-9200

**DOCKET**  
JUL 07 2005

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6806-1 Lefkof - Nov. 19, 2004

SHEET 2 PAGE 2

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 BRIAN HUCHRO, ESQ.

5 SHEILA E. O'CALLAGHAN, ESQ.

6 Division of Enforcement

7 Securities and Exchange Commission

8 44 Montgomery Street, Suite 1100

9 San Francisco, CA 94104

10 415-705-2459

11

12 On behalf of the Witness:

13 JAVAN P. RAISSI, ESQ.

14 ARTHUR J. SHARTSIS, ESQ.

15 Shartsis, Friesse & Ginsburg LLP

16 One Maritime Plaza, 18th Floor

17 San Francisco, CA 94111

18 415-421-6500

19

20

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24

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1 PROCEEDINGS

2 MS. O'CALLAGHAN: We are on the record on November

3 19, 2004, at 9:41 a.m.

4 Sir, could you please raise your right hand.

5 Whereupon,

6 ALAN BARRY LEFKOF

7 was called as a witness herein and, having been first duly

8 sworn, was examined and testified as follows:

9 MS. O'CALLAGHAN: Could you please state and spell

10 your full name for the record?

11 THE WITNESS: First name Alan, A-l-a-n, middle

12 initial B, as in boy, last name, Lefkof, L-e-f-k-o-f.

13 MS. O'CALLAGHAN: Sir, what does the B stand for?

14 THE WITNESS: Barry.

15 MS. O'CALLAGHAN: Spell it please?

16 THE WITNESS: B-a-r-r-y.

17 MS. O'CALLAGHAN: Okay. My name is Sheila

18 O'Callaghan, and with me is Mr. Brian Huchro. We are both

19 officers of the Commission for the purposes of this

20 proceeding.

21 This is an investigation by the United States

22 Securities and Exchange Commission in the matter of Netopia,

23 to determine whether there have been violations of certain

24 provisions of the Federal Securities Laws, however, the facts

25 developed in this investigation might constitute violations

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1 of other federal or state civil or criminal laws.

2 Prior to the opening of the record, you were

3 provided with a copy of the Formal Order of Investigation in

4 this matter, it will be available to you for your examination

5 during the course of the proceeding.

6 Have you had an opportunity to review the Formal

7 Order?

8 THE WITNESS: Yes.

9 MS. O'CALLAGHAN: Do you have any questions?

10 THE WITNESS: No.

11 MS. O'CALLAGHAN: You were also provided with a

12 copy of the Commission's Supplemental Information Form, a

13 copy of that was marked as Exhibit 1. Mr. Lefkof, have you

14 had an opportunity to review Exhibit 1?

15 THE WITNESS: I'll just take one more minute.

16 MS. O'CALLAGHAN: Sure, go right ahead.

17 THE WITNESS: Okay.

18 MS. O'CALLAGHAN: Do you have any questions

19 concerning Exhibit 1?

20 THE WITNESS: No.

21 MS. O'CALLAGHAN: Mr. Lefkof, are you represented

22 by counsel?

23 THE WITNESS: Yes.

24 MS. O'CALLAGHAN: Would counsel please identify

25 themselves?

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6806-1 Lefkof - Nov. 19, 2004

SHEET 3 PAGE 6

1 MR. RAISSI: Jahan Raissi, Shartsis, Friese and  
2 Ginsburg.  
3 MR. SHARTSIS: Arthur Shartsis, Shartsis, Friese  
4 and Ginsburg.  
5 MS. O'CALLAGHAN: Mr. Raissi and Mr. Shartsis, are  
6 you representing Mr. Lefkof in his individual capacity today?  
7 MR. RAISSI: We are.  
8 MS. O'CALLAGHAN: Just for the record, during the  
9 course of the testimony we may be joined by another member of  
10 the Commission's staff, Michael Dicke.  
11 EXAMINATION  
12 BY MS. O'CALLAGHAN:  
13 Q I'm going to hand you a copy of what has been  
14 marked as Exhibit 48 in this investigation. It was marked  
15 before we went on the record by the Court Reporter. I ask  
16 that you take an opportunity to review Exhibit 48. For the  
17 record, Exhibit 48 is dated November 2, 2004, it's addressed  
18 to Mr. Lefkof, c/o Jahan Raissi at Shartsis Friese, and it  
19 has the subpoena that calls for both documents and testimony.  
20 And then an attachment identifying the documents. It's under  
21 my signature. Sir, have you had an opportunity to review  
22 Exhibit 48?  
23 (SEC Exhibit 48 was marked  
24 for identification.)  
25 A Yes.

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1 that would have been responsive to the subpoena?  
2 A And then one other small note, just the typo on my  
3 name, at the end it's an f, not a b.  
4 Q Yeah, I apologize for that.  
5 A No problem. So, the first thing I did was just  
6 look through my office to see if there were any personal  
7 items called for in the subpoena. And the only thing there  
8 was the calendars. And then I looked in my home office and  
9 the only thing I found there was the financial records of my  
10 stock sales and the 10b5-1 plan.  
11 Q Sir, where did you look in your office?  
12 A At work, you mean at work?  
13 Q Yeah, right.  
14 A I looked just in the two areas where I have one  
15 filing cabinet, and then I have notebooks that are stored on  
16 the top of the desk.  
17 Q You looked at both those places?  
18 A Yes.  
19 Q And did you do that personally?  
20 A Yes.  
21 Q What do you usually keep in the filing cabinet?  
22 A Mostly customer contracts and some product vendor  
23 files.  
24 Q Did you find anything in the filing cabinet?  
25 A No.

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1 Q Are you appearing here today pursuant to that  
2 subpoena, sir?  
3 A Yes.  
4 Q Sir, do you note the document not only calls for  
5 your appearance here but it also calls for the production of  
6 certain documents. Those are listed on the attachment, which  
7 I believe counsel is showing you right now?  
8 A Yes.  
9 Q Sir, have you tendered to the staff all the  
10 documents that were called for by the subpoena?  
11 A Yes.  
12 Q I want to just make a note, when I was reviewing  
13 the documents that you produced, I noted that you had a  
14 10b5-1 plan, plan, are you familiar with that, sir?  
15 A Yes.  
16 Q And it was, I believe, for the year starting in  
17 December 2003?  
18 A That's correct.  
19 Q Okay. Did you have a plan prior to that time?  
20 A No.  
21 Q So, that was the first time you created a 10b5-1  
22 plan?  
23 A That was my first plan.  
24 Q All right. Let me just make sure, let me go back  
25 and ask if you can tell me what you did to look for documents

PAGE 9

1 And the notebooks, that's right?  
2 A The documents on my desk are related to each  
3 quarter and then there's a pretty common tab sheet each quarter,  
4 it would have earnings projections. It would have a  
5 copy of my script that I use to make earnings conference  
6 calls, and then I would have generally accounting data.  
7 Q Did you find any documents that were responsive to  
8 the Commission's subpoena in those notebooks?  
9 A Those notebooks had all company documents and no  
10 no, I didn't find any personal documents related to the  
11 subpoena.  
12 Q The company had produced documents, are you  
13 aware of that?  
14 A Yes, in fact I did this exercise earlier in the  
15 audit committee investigation and some company documents I  
16 gave to Morrison, Forrester, and I believe they've submitted  
17 some of those to all of the witnesses to you guys.  
18 Q Do you know which particular portion of the documents  
19 that were kept in your notebooks?  
20 A Yeah, well I went through all the notebooks and  
21 I know they took some xerox copies. I don't know which items  
22 they xeroxed.  
23 Q Did you provide them with access to your office  
24 when?  
25 A I did.

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**SEC'S DEPOSITION OF  
PERCY JAMES SANDERS  
TAKEN ON MARCH 1, 2005**

## Multi-Page™

<p>1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION</p> <p>2</p> <p>3 In the Matter of: )</p> <p>4 NETOPIA, INC. ) File No. SF-02846-A</p> <p>5 )</p> <p>6</p> <p>7 WITNESS: Percy James Sanders</p> <p>8 PAGES: 1 through 143</p> <p>9 PLACE: Securities and Exchange Commission</p> <p>10 44 Montgomery Street, Suite 2600</p> <p>11 San Francisco, California</p> <p>12 DATE: Tuesday, March 1, 2005</p> <p>13 The above-entitled matter came on for hearing, pursuant</p> <p>14 to notice, at 9:00 a.m.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Diversified Reporting Services, Inc.</p> <p>25 (202) 467-9200</p>	<p style="text-align: right;">Page 3</p> <p>1 CONTENTS</p> <p>2</p> <p>3 WITNESS EXAMINATION</p> <p>4 Percy James Sanders 1</p> <p>5</p> <p>6 EXHIBITS: DESCRIPTION IDENTIFIED</p> <p>7 169 Subpoena, attachments 6</p> <p>8 170 Resume/Application 11</p> <p>9 171 E-mail String 63</p> <p>10 172 E-mail String 67</p> <p>11 173 E-mail from Sanders 76</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Securities and Exchange Commission:</p> <p>4 SHEILA O'CALLAGHAN, ESQ.</p> <p>5 BRIAN HUCHRO, ESQ.</p> <p>6 44 Montgomery Street, Suite 2600</p> <p>7 San Francisco, CA</p> <p>8</p> <p>9 On behalf of the Witness:</p> <p>10 HOWARD S. CARO, ESQ.</p> <p>11 MADELENE LOW, ESQ.</p> <p>12 Heller Ehrman</p> <p>13 333 Bush Street</p> <p>14 San Francisco, CA 94104</p> <p>15 (415) 772-6487</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 PROCEEDINGS</p> <p>2 MS. O'CALLAGHAN: We are on the record at 9:08</p> <p>3 a.m., March 1st, 2005.</p> <p>4 Sir, could I ask you to please raise your right</p> <p>5 hand?</p> <p>6 Whereupon,</p> <p>7 PERCY JAMES SANDERS</p> <p>8 was called as a witness herein and, having been previously</p> <p>9 duly sworn, was examined and testified as follows:</p> <p>10 EXAMINATION</p> <p>11 BY MS. O'CALLAGHAN:</p> <p>12 Q Could you please state and spell your full name?</p> <p>13 A Percy James Sanders, P-e-r-c-y J-a-m-e-s S-a-n-d-</p> <p>14 e-r-s.</p> <p>15 Q Sir, my name is Sheila O'Callaghan, with me is Mr.</p> <p>16 Brian Huchro, we are both officers of the Commission for the</p> <p>17 purpose of this proceeding.</p> <p>18 This is an investigation by the United States</p> <p>19 Securities and Exchange Commission, in the matter of Netopia,</p> <p>20 to determine whether there have been violations of certain</p> <p>21 provisions of the federal securities laws.</p> <p>22 However, the facts developed in this investigation</p> <p>23 might constitute violations of other federal or state, civil</p> <p>24 or criminal laws.</p> <p>25 Prior to the opening of the record you were</p>

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1 provided with a copy of the formal order of investigation.  
 2 It will be available for your examination during the course  
 3 of this proceeding.  
 4 Mr. Sanders, have you had an opportunity to review  
 5 the formal order?  
 6 A Yes, I have.  
 7 Q Do you have any questions regarding it?  
 8 A Not at this time, no.  
 9 Q Prior to the opening of the record, or previously  
 10 we had marked, you were provided with a copy of the  
 11 Commission's supplemental information. A copy of that form  
 12 has previously been marked as Exhibit Number 1.  
 13 Mr. Sanders, have you had an opportunity to review  
 14 Exhibit Number 1?  
 15 A Yes, I have.  
 16 Q Do you have any questions concerning Exhibit 1?  
 17 A No, I do not.  
 18 Q Mr. Sanders, are you represented by counsel?  
 19 A Yes, I am.  
 20 MS. O'CALLAGHAN: Would counsel please identify  
 21 themselves for the record?  
 22 MR. CARO: Howard Caro, of the firm of Heller,  
 23 Ehrman, White and McAuliffe, on behalf of the witness.  
 24 MS. LOH: Madellene Loh, from Heller Ehrman, on  
 25 behalf of the witness.

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1 MS. O'CALLAGHAN: Prior to going on the record I  
 2 asked the court reporter to mark, for identification, a  
 3 document that is six pages in length. The first two pages  
 4 are a letter dated January 27th, 2005, directed to Mr.  
 5 Sanders' care, of Craig Martin, of the law firm Morrison and  
 6 Foerster. It's signed by Brian Huchro. Following that is a  
 7 subpoena, also signed by Mr. Huchro, and then an attachment  
 8 with document items 1 through 18.  
 9 (SEC Exhibit No. 169 was marked for  
 10 identification.)  
 11 BY MS. O'CALLAGHAN:  
 12 Q Sir, I'm going to hand you a copy of what's just  
 13 been marked as Exhibit 169. And just let me caution you,  
 14 sir, that you cannot write on the exhibits, okay. And the  
 15 same is true for counsel.  
 16 Sir, why don't you take an opportunity to look at  
 17 Exhibit 169, and once you finish looking it over, just let me  
 18 know.  
 19 Mr. Sanders, have you had an opportunity to review  
 20 Exhibit 169?  
 21 A Yes, I have.  
 22 Q Sir, is this the subpoena pursuant to which you are  
 23 appearing here, today?  
 24 A Yes, it is.  
 25 Q Sir, I believe that the subpoena also calls for the

Page 7

1 production of documents, and those are set forth in the last  
 2 three pages of Exhibit 169. Have you produced, to the staff,  
 3 all documents responsive to Exhibit 169?  
 4 A Yes, I have.  
 5 Q Sir, have you ever given testimony under oath  
 6 before?  
 7 A No, I have not.  
 8 Q All right, then let me -- I'm sure your counsel has  
 9 covered a lot of this material with you beforehand, but just  
 10 sort of as a reminder, in this instance you're going to be --  
 11 we're speaking into microphones. All this is going to be  
 12 recorded on the tape recorder, and then it will end up in a  
 13 booklet that will be provided to you, if you should decide to  
 14 purchase one.  
 15 Therefore, it's important that your responses be  
 16 oral, verbal responses. Do you understand?  
 17 A Yes, I do.  
 18 Q Okay. And it's also important that you speak up so  
 19 that the court reporter can hear you, and if you're not loud  
 20 enough, generally the court reporter will inform you. So  
 21 okay?  
 22 A All right.  
 23 Q And if there's -- I don't know if it's a problem  
 24 here, yet, in this regard, but often what happens is when I'm  
 25 asking questions people will anticipate and will start to

Page 8

1 respond before I finish asking the question. It's important  
 2 that you let me complete my question before you answer. I'll  
 3 try to let you complete your answers before asking a further  
 4 question. Does that sound fine?  
 5 A Yes, it is.  
 6 Q Okay. If you don't understand a question, could  
 7 you let me know?  
 8 A I will do so.  
 9 Q Okay. Otherwise, I'll assume that you understood  
 10 the question, okay?  
 11 A I understand.  
 12 Q Okay. Could you also speak up a little, I notice  
 13 you seem to be a quiet talker.  
 14 Okay. Sir, if at some point in time you've already  
 15 answered a question, we go on in the examination and you  
 16 think of something that you'd like to add, or some sort of a  
 17 clarification to what you've previously testified, let me  
 18 know and we'll go back and you can just add that information.  
 19 Okay?  
 20 A Yes, I will.  
 21 Q All right. And sir, if sometimes when you're  
 22 asking questions you can think of a document that might  
 23 assist you in refreshing your memory, if you are aware of  
 24 such a document, let me know about that, okay?  
 25 A I will attempt to do so.

**SEC'S DEPOSITION OF  
ERICK BELL  
TAKEN ON JANUARY 5, 2005**



Depo.Bell.1.5.05

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of: )

4 NETOPIA, INC. ) File No. SF-02846-A

5 )

6

7 WITNESS: Erick Bell

8 PAGES: 451 through 550

9 PLACE: Securities and Exchange Commission

10 44 Montgomery Street, Suite 2600

11 San Francisco, California

12 DATE: Wednesday, January 5, 2005

13 The above-entitled matter came on for hearing, pursuant  
14 to notice, at 9:45 a.m.

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24 Diversified Reporting Services, Inc.

25 (202) 467-9200

□

Depo.Bell.1.5.05

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 BRIAN HUCHRO, ESQ.

5 SHEILA O'CALLAGHAN, ESQ.

6 44 Montgomery Street, Suite 2600

7 San Francisco, CA

8

9 On behalf of the witness:

10 KAREN KENNARD, ESQ.

11 BRIAN CHUN, ESQ.

12 Bingham McCutchen

13 Three Embarcadero Center

14 San Francisco, CA 94111

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16

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1 C O N T E N T S

2

3 WITNESS

EXAMINATION

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1 P R O C E E D I N G S

2 MR. HUCHRO: We're on the record at 9:45, on

3 January 5th, 2005.

4 Just for the record, I'm Brian Huchro, and with me

5 is Sheila O'Callaghan.

6 whereupon,

Depo.Bell.1.5.05

ERICK BELL

7  
8 was called as a witness herein and, having been first duly  
9 sworn, was examined and testified as follows:

10 EXAMINATION

11 BY MR. HUCHRO:

12 Q Mr. Bell, this is a continuation of your previous  
13 testimony, which was pursuant to a subpoena, and I just want  
14 to remind you, I'm not going to go through everything that we  
15 went through the first time, that your testimony is still  
16 under oath; do you understand that?

17 A Yes.

18 Q Great. And then prior to opening the record you  
19 were provided with a copy of the formal order, the memorandum  
20 that's sitting in front of you. Have you had an opportunity  
21 to take a look at that?

22 A Yes.

23 Q Do you have any questions regarding that?

24 A Are you referring to Exhibit 41?

25 Q The formal order. No, the formal order memo?

455

1 A No.

2 Q And then, also prior to the opening of the record,  
3 you were provided with a copy of our standard form 1662,  
4 which is marked as Exhibit Number 1. Do you have any  
5 questions regarding that?

6 A No.

7 MR. HUCHRO: And then if counsel could just  
8 identify themselves, please?

9 MS. KENNARD: Good morning, I'm Karen Kennard, from

**DEPOSITION OF  
KATHY GEARHART**

**TAKEN ON SEPTEMBER 12, 2006**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

--oOo--

IN RE NETOPIA, INC. SECURITIES) Case No. C 04-3364  
LITIGATION. )  
\_\_\_\_\_ )

DEPOSITION OF  
KATHY GEARHART

\_\_\_\_\_  
Tuesday, September 12, 2006

(Pages 1 - 188)

REPORTED BY: KATHLEEN WILKINS, RPR, CRR, CSR 10068

(2001-386030)

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QUESTION WITNESS INSTRUCTED NOT TO ANSWER

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**SEC'S DEPOSITION OF  
JONATHAN GUTHART**

**TAKEN ON NOVEMBER 9, 2004**

Depo.Guthart.11.9.04

1

1 U.S. SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of: )

4 ) File No. SF-02846-A

5 NETOPIA INC., )

6

7 WITNESS: Jonathan Guthart

8 PAGES: 1 through 284

9 PLACE: U.S. Securities & Exchange Commission

10 44 Montgomery Street

11 Suite 2600, A-2602

12 San Francisco, California

13

14 DATE: Tuesday, November 9, 2004

15

16

17

18 The above-entitled matter came on for hearing, pursuant  
19 to notice, at 9:50 a.m.

20

21

22

23

24 Diversified Reporting Services, Inc.

25 (202) 467-9200

□

Depo.Guthart.11.9.04

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1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 BRIAN A. HUCHRO, Staff Attorney

5 SHEILA O'CALLAGHAN, Staff Attorney

6 United States Securities and Exchange Commission

7 Office of Enforcement

8 44 Montgomery Street, Suite 2600

9 San Francisco, California 94104

10 (415) 705-2458, voice; (415) 705-2331, fax

11

12 On behalf of Deponent Jonathan Guthart:

13 DALE E. BARNES, Attorney at Law

14 BRIAN CHUNG, Attorney at Law

15 Bingham McCutchen LLP

16 Three Embarcadero Center

17 San Francisco, California 94111-4067

18 (415) 393-2522, voice; (415) 393-2286, fax

19

20 DAVID WAGNER, Attorney at Law

21 KPMG LLP

22 757 Third Avenue

23 New York, New York 10017

24 (212) 909-5842, voice; (212) 909-5477, fax

25

□

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1

I N D E X

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Depo.Guthart.11.9.04

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4 WITNESS:

EXAMINATION

5

6 Jonathan Guthart

4, 131

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9

10 EXHIBITS

PAGE

11

12 1 SEC Form 1662

4

13 42 Subpoena for testimony and

14 documents

6

15 43 Notes from conversation with

16 Mr. Baker, Mr. Lefkof, and Mr.

17 Kadish

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18 44 Notes from April 16th

222

19 45 E-mail

254

20 46 Witness' Notes

272

21 47 Minutes of Meeting of Audit

22 Committee, Dated July 6, 2004

275

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1

P-R-O-C-E-E-D-I-N-G-S

2

(SEC Exhibit 1 was marked for

3

identification.)

4

MR. HUCHRO: We are on the record. It's the 9th of

5

November at 9:15 in the morning. I am Brian Huchro and this

Depo.Guthart.11.9.04  
6 is Sheila O'Callaghan.

7 Mr. Guthart, could you raise your right hand,  
8 please?

9 Whereupon,

10 JONATHAN GUTHART,  
11 called as a witness by the Commission, having been duly  
12 sworn, was examined and testified as follows:

13 EXAMINATION

14 MR. HUCHRO: Thank you.

15 BY MR. HUCHRO:

16 Q Could you please state your full name and spell  
17 your name for the record?

18 A Jonathan Ross Guthart, J-o-n-a-t-h-a-n R-o-s-s  
19 G-u-t-h-a-r-t.

20 Q Thanks.

21 As I mentioned, Ms. O'Callaghan and myself are  
22 officers of the Commission for the purposes of this  
23 proceeding. Michael Dicke, D-i-c-k-e, may be joining us  
24 later in the day.

25 This is an investigation by the United States

□

5

1 Securities and Exchange Commission in the Matter of Netopia  
2 Incorporated to determine whether there have been violations  
3 of certain provisions of the federal securities laws.  
4 However, the facts developed in this investigation might  
5 constitute violations of other federal or state civil or  
6 criminal laws.

7 Prior to the opening of the record you were  
8 provided with a copy of the formal Order of Investigation in

Depo.Guthart.11.9.04

9 this matter. It will be available for you during your  
10 examination in this course of this proceeding.

11 Mr. Guthart, have you had an opportunity to review  
12 the formal order?

13 A I have.

14 Q Do you have any questions?

15 A Not at this time.

16 Q Thanks.

17 Additionally, prior to opening the record you were  
18 provided with a copy of the Commission's Supplemental  
19 Information form. A copy of that notice has been marked as  
20 Exhibit Number 1. Have you had an opportunity to read that,  
21 Mr. Guthart?

22 A I have.

23 Q Do you have any questions regarding that?

24 A Not at this time.

25 Q Thanks.

□

6

1 Mr. Guthart, are you represented by counsel?

2 A I am.

3 MR. HUCHRO: Would counsel please identify  
4 themselves?

5 MR. BARNES: My name is Dale Barnes of Bingham  
6 McCutchen. And with me is Brian Chung also of Bingham  
7 McCutchen. And also present is David Wagner of KPMG.

8 MR. HUCHRO: Very good.

9 BY MR. HUCHRO:

10 Q Mr. Guthart, do you understand that the statutes  
11 set forth in Exhibit 1 provide criminal penalties for



**SEC'S DEPOSITION OF  
BARBARA JOY MEDINA MARTINEZ  
TAKEN ON MARCH 1, 2005**

## Multi-Page™

<p>1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION</p> <p>2</p> <p>3 In the Matter of: )</p> <p>4 NETOPIA, INC. ) File No. SF-02846-A</p> <p>5 )</p> <p>6</p> <p>7 WITNESS: Barbara Joy Medina Martinez</p> <p>8 PAGES: 1 through 79</p> <p>9 PLACE: Securities and Exchange Commission</p> <p>10 44 Montgomery Street, Suite 2600</p> <p>11 San Francisco, California</p> <p>12 DATE: Tuesday, March 1, 2005</p> <p>13 The above-entitled matter came on for hearing, pursuant</p> <p>14 to notice, at 2:00 p.m.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Diversified Reporting Services, Inc.</p> <p>25 (202) 467-9200</p>	<p style="text-align: right;">Page 3</p> <p>1 C O N T E N T S</p> <p>2</p> <p>3 WITNESS EXAMINATION</p> <p>4 Barbara Joy Medina Martinez 4</p> <p>5</p> <p>6 EXHIBITS: DESCRIPTION IDENTIFIED</p> <p>7 174 Subpoena w/attachments 6</p> <p>8 175 Copy of Shipping Order 44</p> <p>9 176 Financials for D. Kadish 66</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Securities and Exchange Commission:</p> <p>4 SHEILA O'CALLAGHAN, ESQ.</p> <p>5 BRIAN HUCHRO, ESQ.</p> <p>6 44 Montgomery Street, Suite 2600</p> <p>7 San Francisco, CA</p> <p>8</p> <p>9 On behalf of the Witness:</p> <p>10 HOWARD S. CARO, ESQ.</p> <p>11 L. MICHAEL LIFTIK, ESQ.</p> <p>12 Heller Ehrman</p> <p>13 333 Bush Street</p> <p>14 San Francisco, CA 94104</p> <p>15 (415) 772-6487</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 PROCEEDINGS</p> <p>2 MR. HUCHRO: We're on the record at 2:05 on March</p> <p>3 1st, with -- March 5th -- excuse me, March 1st, 2005, with</p> <p>4 Barbara Medina.</p> <p>5 Ms. Medina, could you please raise your right hand</p> <p>6 for me?</p> <p>7 Whereupon,</p> <p>8 BARBARA JOY MEDINA MARTINEZ</p> <p>9 was called as a witness herein and, having been previously</p> <p>10 duly sworn, was examined and testified as follows:</p> <p>11 EXAMINATION</p> <p>12 BY MR. HUCHRO:</p> <p>13 Q Thanks. Would you please state your full name and</p> <p>14 spell it for the record?</p> <p>15 A Barbara Joy Medina. I just got married, so it is</p> <p>16 now Martinez.</p> <p>17 Q Okay. And could you spell that for us?</p> <p>18 A B-a-r-b-a-r-a J-o-y M-a-r-t-i-n-e-z.</p> <p>19 Q Thank you. Just for identification purposes, I'm</p> <p>20 Brian Huchro, and with me is Sheila O'Callaghan, and we are</p> <p>21 both officers of the Commission for purposes of this</p> <p>22 proceeding.</p> <p>23 This is an investigation by the United States</p> <p>24 Securities and Exchange Commission, in the matter of Netopia,</p> <p>25 Inc., to determine whether there have been violations of</p>

## Multi-Page™

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<p>1 certain provisions of the federal securities laws.</p> <p>2 However, the facts developed in this investigation</p> <p>3 might constitute violations of other federal or state, civil</p> <p>4 or criminal laws.</p> <p>5 Prior to the opening of the record you were</p> <p>6 provided with a copy of the formal order of investigation in</p> <p>7 this matter. It will be available for your examination</p> <p>8 during the course of the proceeding.</p> <p>9 Ms. Medina, do you have any -- would you prefer</p> <p>10 Medina or Martinez?</p> <p>11 A Martinez.</p> <p>12 Q Okay. Ms. Martinez, have you had an opportunity to</p> <p>13 review the formal order?</p> <p>14 A Yes.</p> <p>15 Q Do you have any questions?</p> <p>16 A No.</p> <p>17 Q Okay. In addition, prior to the opening of the</p> <p>18 record, you were provided with a copy of the Commission's</p> <p>19 supplemental information form, a copy of that has been</p> <p>20 previously marked Exhibit Number 1.</p> <p>21 Have you had an opportunity to read that?</p> <p>22 A Yes.</p> <p>23 Q Do you have any questions about that?</p> <p>24 A No.</p> <p>25 Q Ms. Martinez, are you represented by counsel today?</p>	<p>1 certain documents, as included on the attachment, the last</p> <p>2 three pages of the subpoena; do you see that?</p> <p>3 A Yes.</p> <p>4 Q Did you tender all documents that you believe were</p> <p>5 responsive to the SEC's request?</p> <p>6 A Everything that I had access to.</p> <p>7 Q Okay, great. Ms. Martinez, have you ever given</p> <p>8 testimony under oath before?</p> <p>9 A Yes.</p> <p>10 Q How many times?</p> <p>11 A Once.</p> <p>12 Q Well, I'll just go through a couple of background</p> <p>13 things for SEC testimony. You need to speak up and give oral</p> <p>14 answers. Shaking the head, and uh-huhs, and huh-uhs don't</p> <p>15 translate. As you see, this is being tape recorded, so it's</p> <p>16 important that you let me finish my question before you</p> <p>17 answer, and I'll let you finish your answer before I ask you</p> <p>18 the next question. Does that make sense?</p> <p>19 A Uh-hum, yes.</p> <p>20 Q Okay. If at some point you don't understand a</p> <p>21 question that I ask, just let me know and I'll rephrase the</p> <p>22 question so you do understand it. Make sense?</p> <p>23 A Okay.</p> <p>24 Q Okay. In addition, sometimes you may recall</p> <p>25 additional information as we're talking, about a question</p>
Page 6	Page 8
<p>1 A Yes.</p> <p>2 MR. HUCHRO: Would counsel please identify</p> <p>3 themselves?</p> <p>4 MR. CARO: Howard Caro and Michael Liflik, of</p> <p>5 Heller Ehrman, on behalf of the witness.</p> <p>6 MR. HUCHRO: Before we started I had the court</p> <p>7 reporter mark a six-page document as Exhibit Number 174. The</p> <p>8 first couple pages are a two-page letter, signed by myself.</p> <p>9 The third page is a subpoena for documents and testimony, and</p> <p>10 then an attachment, a three-page attachment requesting</p> <p>11 production of certain documents.</p> <p>12 (SEC Exhibit No. 174 was marked for</p> <p>13 identification.)</p> <p>14 BY MR. HUCHRO:</p> <p>15 Q I'm going to hand you a copy of that right now,</p> <p>16 give you an opportunity to look at that, and a copy to</p> <p>17 counsel. And if you can just take a couple of minutes, or as</p> <p>18 long as you like, and let me know when you've had an</p> <p>19 opportunity to look at that document?</p> <p>20 Have you seen document, Exhibit 174 before?</p> <p>21 A The subpoena, yes.</p> <p>22 Q Okay. And is the subpoena, on the third page, the</p> <p>23 subpoena for which you're testifying here, today?</p> <p>24 A Yes.</p> <p>25 Q And the subpoena also called for the production of</p>	<p>1 you've already answered. If that happens and you recollect</p> <p>2 additional information, just stop me at that point and we'll</p> <p>3 deal with your additional recollection at that point. Make</p> <p>4 sense?</p> <p>5 A Yes.</p> <p>6 Q Okay. Are you taking any medications or drugs that</p> <p>7 may make it difficult for you to understand and answer my</p> <p>8 questions today?</p> <p>9 A No.</p> <p>10 Q Are you ill today?</p> <p>11 A No.</p> <p>12 Q Is there any reason you can think of why you will</p> <p>13 not be able to answer my questions fully and truthfully?</p> <p>14 A No.</p> <p>15 Q Have you ever given testimony in an SEC proceeding</p> <p>16 or a proceeding before one of the stock exchanges?</p> <p>17 A No.</p> <p>18 Q An arbitration proceeding?</p> <p>19 A No.</p> <p>20 Q Could you please state your date of birth for the</p> <p>21 record?</p> <p>22 A June 16th, 1958.</p> <p>23 Q Okay. And your home address?</p> <p>24 A</p> <p>25 Q Can you spell that, please?</p>

REDACTED

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**Current Report · Form 8-K  
Filing Table of Contents**

<u>Document/Exhibit</u>	<u>Description</u>	<u>Pages</u>	<u>Size</u>
1: 8-K	Current Report	HTML	77K
2: EX-99.1	Press Release	HTML	69K

**8-K · Current Report**

*This is an EDGAR HTML document rendered as filed. / Alternative Formats /*

**Form 8-K**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K****CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

Date of report (Date of earliest event reported): September 10, 2004

**NETOPIA, INC.**

(Exact Name of Registrant as Specified in Charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**0-28450**  
(Commission File Number)

**94-3033136**  
(IRS Employer  
Identification No.)

**6001 Shellmound Street, 4<sup>th</sup> Floor, Emeryville, California**  
(Address of Principal Executive Offices)

**94608**  
(Zip Code)

**Registrant's telephone number, including area code: (510) 420-7400**

**Same**  
(Former name or Former Address, if Changed Since Last Report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing**

As previously disclosed on August 25, 2004 in Netopia, Inc.'s ("*Netopia*") Form 8-K, Netopia's common stock is subject to delisting from The Nasdaq Stock Market because Netopia has not filed its Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2004. Netopia's common stock currently trades under the symbol NTPAE, reflecting Nasdaq's convention for companies making delayed public filings. Although Netopia had requested an oral hearing before the Nasdaq Listing Qualifications Panel to seek an extension of time before its common stock is delisted in order to file the Form 10-Q, Netopia now has withdrawn such request and has requested a decision on the basis of its written submissions.

Because of the ongoing review by Netopia's audit committee described below, the resignation of KPMG LLP ("*KPMG*") described below as Netopia's auditors and the need for Netopia to engage new auditors, Netopia is unable to determine at this time when the restatements described below in Item 4.02 will be completed or when the Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2004 or any future quarterly or annual reports will be filed with the Securities and Exchange Commission. As a result, Netopia believes that it is likely that its common stock will be delisted from The Nasdaq Stock Market in the near future.

**Item 4.01. Changes in Registrant's Certifying Accountant**

On September 10, 2004, the KPMG partner in charge of its engagement as the independent registered public accounting firm for Netopia orally informed the Chairman of Netopia's audit committee that KPMG was resigning such engagement effective as of such date.

The reports of KPMG on Netopia's consolidated financial statements for the fiscal years ended September 30, 2003 and 2002 did not contain an adverse opinion or disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principles.

During the fiscal years ended September 30, 2003 and 2002, and the subsequent interim period from October 1, 2003 through September 10, 2004, (i) there were no disagreements between Netopia and KPMG on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of KPMG, would have caused KPMG to make reference to the subject matter of the disagreement(s) in connection with its report on the consolidated financial statements for such periods, other than as described in item (1) in the next paragraph and (ii) there were no "*reportable events*" as such term is defined in Item 304(a)(1)(v) of Regulation S-K, other than as described in item (2) in the next paragraph.

(1) Prior to KPMG's resignation, KPMG requested on September 8, 2004 that Netopia's audit committee provide KPMG with certain information, and the audit committee and KPMG were engaged in an ongoing discussion concerning such information, which consists of documents over which the Company had asserted privilege as a basis for not providing KPMG with access to such documents. This matter had not been resolved at the time of KPMG's resignation. According to KPMG, if all or some portion of such information were not provided as requested, KPMG's auditors' report would have included an audit scope limitation with respect to this matter. (2) Prior to its resignation, KPMG had advised the Netopia audit committee that information provided by the audit committee, if further investigated, (i) might materially impact the fairness or reliability of its previously issued audit reports and the underlying financial statements and (ii) might cause it to be unwilling to rely on management's representations. Because KPMG resigned before conducting such further investigation, it did not reach any conclusions and accordingly they were not resolved to KPMG's satisfaction at the time of its resignation.

Prior to September 10, 2004, KPMG had not previously advised management or Netopia's audit committee of its intention to resign its engagement as Netopia's independent registered public accounting firm. The resignation was not sought or recommended by Netopia's audit committee. The audit committee has commenced an immediate search for a new independent accountant.

**Item 4.02. Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.**

As previously disclosed on August 17, 2004 in Netopia's filing on Form 12b-25, Netopia has delayed the filing of its Quarterly Report on Form 10-Q for the third fiscal quarter ended June 30, 2004 due to an ongoing review by Netopia's audit committee of Netopia's accounting and reporting practices, including the appropriateness and/or timing of revenue recognition of software license fees in two transactions with a single software reseller customer. Although the overall audit committee review is not yet complete, the review relating to these two transactions is complete, and Netopia determined on September 14, 2004 that Netopia will restate its financial statements for the fiscal quarter ended June 30, 2002 and for each subsequent fiscal quarter and fiscal year through March 30, 2004 and will revise previously released preliminary financial results for the quarter ended June 30, 2004. Accordingly, the previously filed financial statements for such periods should no longer be relied upon. At the time of KPMG's resignation discussed above in Item 4.01, KPMG also advised Netopia that, based on information provided to KPMG by Netopia's audit committee, in KPMG's view, the audited financial statements for the fiscal year ended September 30, 2003 should no longer be relied upon.

The known restatements principally involve expected adjustments to Netopia's results of operations and balance sheet arising out of questions regarding the appropriateness and/or timing of revenue recognition relating to two software license transactions with a single software reseller customer that are described below.

2003 Software Reseller Transaction

In one of the software license transactions, Netopia recorded in the fourth fiscal quarter of the fiscal year ended September 30, 2003 an account receivable of \$750,400 and recognized \$670,000 of Web platform license revenue, together with \$80,400 of deferred revenue for maintenance services related to this license sale. It is anticipated that the restatements will include the elimination of the \$670,000 of Web platform license revenue recorded in such fourth fiscal quarter, the elimination of the \$80,400 of deferred revenue to be recognized in subsequent quarters, and the elimination of the account receivable from Netopia's balance sheet as of September 30, 2003. It is also anticipated that Netopia will file a Form 10K/A for the fiscal year ended September 30, 2003 to reflect these changes. It is further anticipated that Netopia will file Forms 10Q/A for (i) the fiscal quarter ended December 31, 2003 to reflect the elimination of \$20,100 in Web platform maintenance services revenue recognized in the unaudited condensed consolidated statement of operation for such quarter related to this transaction, and to eliminate the account receivable of \$750,400 and deferred revenue of \$60,300 shown on the unaudited condensed consolidated balance sheet for such quarter and (ii) the fiscal quarter ended March 31, 2004 to reflect the elimination of \$20,100 in Web platform maintenance services revenue recognized in the unaudited condensed consolidated statement of operations for such quarter related to this transaction, and to eliminate the account receivable of \$750,400 and deferred revenue of \$40,200 shown on the unaudited condensed consolidated balance sheet for such quarter. It is also anticipated that these Forms 10-Q/A will include additional changes related to the 2002 Software Reseller Transaction described below.

As previously disclosed on July 22, 2004 in Netopia's filing on Form 8-K, Netopia announced that its operating expenses for the third fiscal quarter ended June 30, 2004 would include a specific bad debt charge of the full amount (\$750,400) of the previously recorded account receivable relating to this transaction. Due to the restatements described above, there will be no bad debt charge for the third fiscal quarter.

On August 26, 2004, Netopia received a payment of \$337,500 from the software reseller customer. Netopia currently is det